IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Suresh Kumar Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.898/2001)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 23-10-2001 in Sessions Case No.36/2001 (136/1998) passed by Sh. Gopesh Chandra Dixit, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: February 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Arvind Kumar Gupta] for the appellant.
Mr. Rinesh Gupta]
Mrs. Alka Bhatnagar]
Mr. Harsh Saini]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Suresh Kumar, the appellant herein, was put to trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu who vide judgment dated October 23, 2001 convicted and sentenced him as under:-

U/s.376 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for three months.

U/s.323 IPC:

To suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Ram Niwas (Pw.1) submitted a written report (Ex.P-1) at Police Station Gudhagorji with the averments that on September 13, 1997 around 8 PM his wife Mala (fictitious name) went to attend call of nature. After some time his mother and aunt also went to attend call of nature. In the Johad accused Suresh Kumar came from behind of his wife and caught hold of her, torned her blouse, gagged her and committed rape on her. Hearing noise, when his mother and aunt reached at the spot they saw Suresh committing rape on Mala. When his mother intervened Suresh inflicted lathi blow on her person and fled away. On that report a case was registered under sections 376, 354, 341 and 323 IPC and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charges under sections 376(i) and 323 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant in the process of assailing the impugned finding made following submissions:-

> (i) There is great delay in lodging the report. The incident took place at 8 PM on September 13, 1997 however the report was lodged at 3 AM on September 14, 1997. Since there was previous enmity between the parties the delay in lodging the

report demolishes the prosecution case.

(ii) On the report of accused a case under sections 147, 148, 149, 448, 323, 324 and 435 IPC was already registered therefore a false case was concocted against the accused.

(iii) The prosecution case stands demolishes from the statements of Sharvani (Pw.4) who in her cross examination admitted that she did not see the face of accused.

(iv) Sharvani (Pw.4) also admitted the fact of enmity with the accused and that FIR 152/97 was registered against them on July 7, 1997.

(v) Dr.S.C.Vyas (Pw.9) who examined the prosecutrix did not find any injury on the person of prosecutrix.

4. Learned Public Prosecutor however supported the impugned judgment and canvassed that testimony of prosecutrix was rightly believed by the trial court. Having scanned the material on record and considering the statements of the prosecutrix as well as Sharvani (Pw.4) I find the factual situation as under:-

(a) FIR No.152/97 was lodged by Suresh (appellant) against the prosecutrix and her family members on July 7, 1997 and a case under sections 147, 447, 435, 323 and 379 IPC was registered against the prosecutrix, her husband and other family members.

(b) Dr. Satish Chand Vyas (Pw.9) conducted ossification test of the prosecutrix and as per X-ray report Ex.P-10 the age of prosecutrix on the date of incident was between 18-20 years.

(c) The prosecutrix (Pw.3) in the cross examination deposed that

appellant had instituted false cases against them and he used to abuse them. She further stated that although she was lying down on the ground, she did not sustain any injury.

(d) Parli (Pw.5), mother in law of prosecutrix, deposed that she had seen the appellant committing rape on her daughter in law. Her bangles were broken.

(e) Shiv Nath (Pw.7) in his cross examination, admitted that Suresh had instituted false cases against him.

(f) Dr. Nirmala Khichar (Pw.8) who examined the prosecutrix, stated that the prosecutrix was habitual of sexual intercourse and no internal or external injury was found on her person.

(g) The appellant in his explanation under section 313 CrPC stated that in two cases lodged by him the prosecutrix and her family members were convicted and sentenced, therefore, he was implicated falsely. Compromise between him and the complainant party entered into.

5. The testimony of prosecutrix in the instant case is vital since she is married and the medical evidence in no way corroborates the charge. It is well settled in law that conviction for offence of rape can be based on the sole testimony of the prosecutrix if it is reliable, unimpeachable and there is no infirmity. The testimony of the prosecutrix is required to be appreciated in the back ground of entire case. The onus to prove that the accused committed sexual intercourse with prosecutrix without her consent and against her will as laid down in section 375 IPC is on the prosecution.

6. From the judicial decisions rendered by the Apex Court the law

as regards the credibility of the testimony of prosecutrix may be summarized thus:-

(i) There is no rule of law that corroboration is essential before there can be a conviction solely on the testimony of the prosecutrix. But as a matter of prudence, the necessity of corroboration must be present to the mind of the Judge.

(ii) There may be circumstances in a given case which might make it safe to dispense with such a corroboration.

(iii) On the other hand, there may be factors in a case tending to show that the testimony of the prosecutrix suffers from infirmities in a manner so as to make it either unsafe or impossible to base a finding of guilt to the same. Some of the salient factors of this type may briefly be stated thus:-

(a) circumstances showing on the part of prosecutrix an animus against the accused;

(b) where the question of want of consent is material, circumstances tending to show consent: e.g., absence of material showing an attempt at resistance; absence of any marks of struggle;

(c) attempt at improvement or exaggeration in the version as attempted by the prosecutrix;

(d) conduct on the part of the prosecutrix, inconsistency with the credibility of the version e.g., omission to make a disclosure at the earliest opportunity;

(e) element of artificiality or unnaturalness in the story as attempted by the prosecutrix, and

(f) absence of signs of rape in the findings of the medical examination or on chemical analysis.

7. In the case on hand concededly the prosecutrix, her husband and other family members were involved in a criminal case bearing FIR No.152/97, instituted by the appellant on July 7, 1997. Thereafter on September 14, 1997 Ram Niwas (Pw.1), the husband of the prosecutrix, submitted written report against the appellant making allegations that appellant committed rape on her wife. Although the incident allegedly occurred on a rough surface where stones were also scattered, the prosecutrix did not sustain any external injury. According to Dr.Nirmala Khichar (Pw.8) the prosecutrix was habitual of sexual intercourse and no internal or external injury was found on her person. The alleged incident occurred on September 13, 1997 at 8 PM and the report was submitted at police station on September 14, 1997 at 3 AM. The delay in filing the report has not been explained. The facts and circumstances of the case demonstrates that the prosecutrix and her family members had an animus against the appellant. I find unnaturalness in the prosecution story. The testimony of prosecutrix, Parli (Pw.5), Shravni (Pw.4) and Shiv Nath Singh (Pw.7) does not inspire confidence. In the facts and circumstances of the case the possibility that the appellant has been falsely implicated in the case, cannot be ruled out. The infirmities noticed by me escaped attention of the learned trial Judge.

8. For these reasons, I allow the appeal and set aside the impugned judgment dated October 23, 2001of Additional Sessions Judge (Fast Track) Jhunjhunu. I acquit the appellant Suresh Kumar of the charges under sections 376 and 323 IPC. The appellant Suresh Kumar, who is in jail, shall

be set at liberty forthwith, if not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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